

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
September 19, 2011 Session

RONALD EADY v. COMMODORE EXPRESS, INC. ET AL.

**Appeal from the Chancery Court for Lincoln County
No. 13202 J. B. Cox, Chancellor**

**No. M2010-01439-WC-R3-WC - Mailed: January 10, 2012
March 8, 2012**

In this workers' compensation suit, the employee, a truck driver, alleged that he sustained a compensable injury to his back. His employer denied that an injury occurred and further contended that, if an injury did occur, it did not arise from or in the course of his employment. The trial court held that the injury was the result of the employee's attempted assault on a co-employee and, therefore, did not arise from his employment. The complaint was dismissed, and the employee has appealed, arguing that the trial court's finding was in error.¹ We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Chancery Court Affirmed

DONALD P. HARRIS, SR. J., delivered the opinion of the Court, in which SHARON G. LEE, J., and E. RILEY ANDERSON, SP. J., joined.

Patrick Thurman, Nashville, Tennessee, for the appellant, Ronald Eady.

C. Douglas Dooley and Benjamin T. Reese, Chattanooga, Tennessee, for the appellees, Commodore Express, Inc., and Liberty Mutual Insurance Company.

¹ Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

MEMORANDUM OPINION

Factual and Procedural Background

Ronald Eady was employed by Commodore Express, Inc., (“Commodore”) as an over-the-road truck driver for four months in 2007. Commodore’s vehicles, which haul produce between California and Middle Tennessee, are operated by two-driver teams. Mr. Eady alleged that he sustained an injury to his lower back on June 29, 2007. The circumstances of the alleged injury were disputed. The trial court bifurcated the issues and held a hearing solely concerning the issue of compensability.

Mr. Eady testified that his injury occurred near mile marker 190 on Interstate 40 in the vicinity of Flagstaff, Arizona. He stated that he was driving the truck and pulled over to the side of the road to urinate. While he was relieving himself, he heard his driving partner, John Thompson, locking the doors of the truck. He testified that, as he reached for the handle on the side of the cab, the truck started to move, causing him to fall onto his back. Mr. Eady said that the truck then moved away from him for an unspecified distance, stopped, moved further down the side of the road, and then stopped again. He saw Mr. Thompson “throwing something on the shoulder of the road.” He ran to the truck, grabbed the “air fairing bracket handle” and pulled himself up onto the “catwalk” between the cab and the trailer, where he remained while Mr. Thompson drove on for about ten miles. Mr. Thompson then stopped the truck near a Arizona Highway patrolman. Another highway patrolman arrived a short time later. Mr. Eady and Mr. Thompson gave statements to one of the officers. After the officer spoke by telephone with Shawn Holloman, an official of Commodore, Mr. Eady was instructed to remove his belongings from the cab of the truck. A patrolman then drove him back to the site of the incident, where Mr. Eady retrieved his bag and cell phone, which Mr. Thompson had placed on the side of the road. Mr. Eady was thereafter taken to a nearby Greyhound bus terminal where he purchased a ticket and returned to Tennessee.

On cross examination, Mr. Eady agreed that he had stated in response to interrogatories that he had “several disagreements” with Mr. Thompson during the trip but, in his deposition, had denied having any such disagreements. He denied that he had threatened Mr. Thompson or had hit the truck with a large stick while it was stopped at mile marker 190. He disputed a statement by Mr. Thompson that Mr. Eady had disconnected the trailer’s air brake lines while he was on the catwalk. He testified that his injury was to his mid-back, but conceded that medical records generated after his return to Tennessee stated that the injury was to his lower back. He acknowledged that he had testified in his discovery deposition that he had been arrested twice, but conceded that he didn’t “remember how many times” he had been arrested.

Mr. Thompson, testifying by video deposition, said that he had worked as a team driver for Commodore on three separate occasions. His account of the events of June 29 differed substantially from Mr. Eady's. Mr. Thompson stated that a dispute had arisen between himself and Mr. Eady on June 28. According to Mr. Thompson, while they were waiting for their truck to be loaded, he asked Mr. Eady to get out of the sleep area of the cab because it was Mr. Thompson's turn to rest. Mr. Eady declined, and the men had words. Thompson testified that Mr. Eady:

just kept talking about [it], you know -- I kept letting up . . . trying to let him know that what he did was wrong . . . because he was interrupting my sleep time . . . and the conversation went on and on. I done got in the bed, and . . . he's still running his mouth . . . just saying a lot of negative stuff, so I just stopped the conversation . . . and went to bed, and he just continued on.

Q: What do you mean? He continued on saying what?

A: Saying . . . crazy stuff, that he was going to do bodily harm to me and . . . if I say one more word, he was going to do this and . . . like that.

According to Mr. Thompson, the argument carried over into June 29. Mr. Eady was driving the truck when "[h]e said . . . he had had enough, and he was going to pull the truck over and whoop my butt." Mr. Eady then stopped the truck and "jumped out of the truck and went straight over to the shoulder and found a stick and come back and hit on the door and told me to get the hell out of there." Mr. Thompson, who had been in the bunk, got into the passenger seat and locked the doors of the truck. According to Mr. Thompson, Mr. Eady continued "cursing and getting real verbal and talked about getting physical."

Mr. Thompson testified that he got into the driver's seat and began to move the truck down the shoulder of the road at low speed. He called Shawn Holloman, who instructed him not to let Mr. Eady back into the truck. Mr. Thompson testified that, per additional instructions from Holloman, he moved the truck farther down the road, then placed Mr. Eady's cell phone and overnight bag on the shoulder. Mr. Holloman told Mr. Thompson that "he had already called authorities." At that time, Mr. Eady was 100 to 150 feet behind the truck. When Mr. Thompson returned to the truck, he checked his rear-view mirror but could not see Mr. Eady until he came running around the rear of the vehicle. Mr. Eady was able to get onto the vehicle in the area between the cab and trailer. Mr. Thompson proceeded to drive the truck along the road for several miles with Mr. Eady shouting at him from his perch behind the cab. Eventually, Mr. Eady "unhooked the air line from the trailer causing the

trailer brakes to lock up and smoke very badly.” Mr. Thompson saw an Arizona highway patrolman on the other side of the road and pulled over. Both men spoke to the patrolman. Mr. Thompson also gave his cell phone to the patrolman so that the patrolman could speak with Mr. Holloman. Mr. Eady was permitted to take his belongings from the truck. Upon Mr. Eady’s return to Tennessee, Commodore terminated his employment.

Sherry Gibbs, Director of Administration for Commodore, testified that Mr. Eady was teamed with eleven different drivers during his four-month period of employment. She stated that after a driver went out with him for a week or two, they refused to team with him. She was working on June 29, 2007, and overheard Mr. Holloman’s side of the telephone conversation with Mr. Thompson. She was present when Mr. Eady was terminated on July 2, 2007. On cross examination, she testified that Mr. Eady had reported to her on July 2 that he injured his back on June 29. She stated that no disciplinary action had been taken against Mr. Eady prior to his termination.

At the conclusion of the hearing, the trial court granted Commodore thirty days to present evidence concerning whether or not Mr. Eady had been offered a panel of physicians. Commodore subsequently introduced the deposition of Dana Kotowski, an adjuster for Commodore’s insurer, who testified that a panel of physicians had been provided and then withdrawn when the claim was denied.

The trial court issued a written memorandum opinion, finding as follows:

The Court is called upon to weigh the credibility of the witnesses as it relates to the issue of whether the injury was in the scope of the plaintiff’s employment. Every credibility issue is resolved against the plaintiff in this case. It is the most probable and likely based upon the testimony of all the other witnesses, that the plaintiff’s rendition of the facts is not credible.

The Court finds that the injury complained of occurred as a result of the employee’s conduct that clearly went outside the bounds of his employment to cross over into a situation that was violent and entirely made worse by his conduct. The plaintiff clearly put his driving partner in a position to have to defend himself from what was to be an attack from a stick. He clearly caused this situation by his conduct which cannot be seen to be in the course and scope of his employment. The best descriptive term for his conduct is outrageous. He clearly left the truck with the intention of doing bodily harm to his partner and everything else that occurred flowed from his

decision to pick up a stick and hit the truck with it. Even his other conduct cannot be seen in any way to be in the scope of his employment.

The trial court entered judgment, dismissing the complaint. Mr. Eady has appealed, contending that the trial court erred by finding that his injury was not compensable.

Standard of Review

We are statutorily required to review the trial court's factual findings "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2). Following this standard, we are further required "to examine, in depth, a trial court's factual findings and conclusions." Crew v. First Source Furniture Grp., 259 S.W.3d 656, 664 (Tenn. 2008) (quoting Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)). We accord considerable deference to the trial court's findings of fact based upon its assessment of the testimony of witnesses it heard at trial, although not so with respect to depositions and other documentary evidence. Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507, 511 (Tenn. 2010); Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). We review conclusions of law de novo with no presumption of correctness. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). Although workers' compensation law must be liberally construed in favor of an injured employee, the employee must prove all elements of his or her case by a preponderance of the evidence. Crew, 259 S.W.3d at 664; Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992).

Analysis

In this case, the trial court was presented with two substantially conflicting accounts of the events surrounding Mr. Eady's alleged injury. Mr. Eady presented a scenario in which his driving partner, Mr. Thompson, attempted to abandon him without warning by the side of an interstate highway hundreds of miles from their destination. Under this version of the events, his injury occurred as result of his attempts to avoid being abandoned. Commodore, primarily through the testimony of Mr. Thompson, contended that, after several days of bickering, Mr. Eady threatened Mr. Thompson with physical violence, that Mr. Thompson attempted to get away from Mr. Eady, and the alleged injury occurred during Mr. Eady's pursuit of Mr. Thompson.

Mr. Eady testified live at the trial, while Mr. Thompson testified by means of a video deposition. The trial court found that Mr. Eady's testimony was not credible and resolved "every credibility issue" in the case against him. We grant the trial court's finding the

deference it is due. Padilla, 324 S.W.3d at 511; Glisson, 185 S.W.3d at 353. Our starting point is, therefore, that Mr. Eady’s alleged injury occurred as a direct result of his attempt to violently assault Mr. Thompson.

In Woods v. Harry B. Woods Plumbing Co., 967 S.W.2d 768 (Tenn. 1998), our Supreme Court abolished the common law defense that precluded an employee from receiving workers’ compensation benefits if he or she was the initial aggressor in an altercation with another who was connected with or related to the employment. Id. at 773. The Court noted that this action was consistent with the decisions of the majority of states that had considered the issue. Id. at 772. Thus, the fact that the alleged injury was caused by Mr. Eady’s attempt to assault his fellow driver does not, in and of itself, bar his claim. The trial court implicitly recognized this proposition. Its resolution of the case was premised on its finding that Mr. Eady had so far departed from the duties and responsibilities of his job as a truck driver that he was no longer acting in the course of his employment.

We find that the evidence is consistent with the trial court’s finding that Mr. Eady had departed from the course of his employment at the time his alleged injury occurred. Mr. Eady’s job was to drive Commodore’s tractor-trailer from place to place for the purpose of receiving, transporting, and delivering goods. According to the evidence, found credible by the trial court, Mr. Eady stopped the vehicle in a remote location, got out of the truck, and set upon a personal mission to obtain an object with which to assault his driving partner. None of these activities had any relationship to his employment, nor were they “incidental” to it. Blankenship v. Am. Ordnance Sys., LLS, 164 S.W.3d 350, 354 (Tenn. 2005) (“[A]n injury occurs in the course of employment ‘when it takes place within the period of the employment, at a place where the employee reasonably may be, and while the employee is fulfilling work duties or engaged in doing something incidental thereto.’”) (quoting 1 Larson’s Workers’ Compensation Law § 12 (2004)). In effect, Mr. Eady stopped performing his job duties and exited his employer’s “premises” (the truck) to enter into his personal mission. We, therefore, conclude that the evidence does not preponderate against the trial court’s finding that Mr. Eady was no longer in the course of his employment at the time his alleged injury occurred.

Commodore also argues that the evidence also supports a finding that the alleged injury was the direct result of Mr. Eady’s willful misconduct and, thus, was barred by Tennessee Code Annotated section 50-6-110(a)(1).² The trial court did not explicitly rule on the issue of willful misconduct asserted by Commodore. Moreover, Commodore did not

² This code section provides that “[n]o compensation shall be allowed for an injury or death due to . . . [t]he employee’s willful misconduct.”

raise this statutory affirmative defense in its answer, nor at any time during the proceedings. We, therefore, decline to address Commodore's argument on the subject.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Ronald Eady and his surety, for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**RONALD D. EADY v. COMMODORE EXPRESS, INC. AND LIBERTY
MUTUAL INSURANCE**

**Chancery Court for Lincoln County
No. 13202**

No. M2010-01439-SC-WCM-WC - Filed March 8, 2012

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Ronald D. Eady, pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Ronald D. Eady, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

LEE, Sharon G., J., Not Participating